

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.165-169/Chny/2021
निर्धारण वर्ष /Assessment Years: 2003-04 to 2007-08

Mr.S.A.Thooyamani,
64, Balasundaram Road,
Near RTO Office,
Coimbatore.
[PAN: AAGPT 1806 M]
(अपीलार्थी/Appellant)

v. The Dy. Commissioner –
of Income Tax,
Central Circle-1,
Coimbatore.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.A.Arjunraj, CA
प्रत्यर्थी की ओर से /Respondent by : Mr.P.Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 21.09.2022
घोषणा की तारीख /Date of Pronouncement : 28.09.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

These five appeals filed by the assessee are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals)-19, Chennai, all dated 03.03.2021 and pertains to assessment years 2003-04 to 2007-08. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. We find that appeal filed by assessee is barred by limitation, for which, necessary petition for condonation of delay explaining the reasons for the delay, has been filed. The learned counsel submitted that assessee

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could not file appeal within the time allowed under the Act, therefore, delay may be condoned. Having heard both sides and considered the petition filed by the assessee for condonation of delay, we are of the considered view that reasons given by assessee for not filing the appeal within the time allowed under the Act, comes under reasonable cause as provided under the Act, for condonation of delay and hence, delay in filing of above appeal is condoned and appeal filed by the assessee is admitted for adjudication.

3. The assessee has, more or less, raised common grounds of appeal for all the assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2003-04, are re-produced as under:

1. The CIT(A) is erred in not admitting the additional grounds submitted and it is prayed for giving direction to CIT(A) to admit the additional grounds and pass orders on merits.

2. The appellant reserves the right to adduce any additional or alternate grounds at the time of hearing.

3. In the circumstances it is prayed to restore the matter to the file of CIT(A) to admit the additional grounds and pass order on merits and render justice.

4. The brief facts extracted from ITA No.165/Chny/2021 for the AY 2003-04 are that the assessee is engaged in the business of retail trading of car accessories and also partner in the firm M/s.Sun Combines. A survey u/s.133A of the Act, was conducted on 11.07.2008 in the business premise of M/s.Sun Combines, which was later converted into search u/s.132 of the Act, on 11.07.2008. Consequent to search, notice u/s.153C of the Act, was issued on 04.08.2010 and the assessment has been completed u/s.143(3) r.w.s.153C of the Act, on 30.11.2010 and determined total income of

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Rs.8,38,150/- after making addition of Rs.6 lakhs towards unexplained cash deposits and Rs.13,727/- towards undisclosed investment in shares. The assessee did not prefer an appeal against the assessment order passed by the AO in pursuant to search action u/s.132 of the Act. The case has been subsequently, revised by the PCIT u/s.263 of the Act, vide order dated 28.03.2013 and set aside the assessment order passed by the AO u/s.143(3) r.w.s.153C of the Act, dated 30.11.2010 and direct the AO to re-do the assessment on the issue of income from other sources being interest on SB A/c amounting to Rs.43,856/-, dividend income declared in fund flow statement amounting to Rs.16,131/- and dividend income not declared for taxation amounting to Rs.2,044/-. The AO has passed the consequent assessment order u/s.143(3) r.w.s.263 of the Act on 19.11.2013 and determined total income of Rs.8,90,387/- by making addition towards interest income from SB A/c as per the directions of the PCIT in 263 proceedings and also differential dividend income not offered to tax by the assessee amounting to Rs.2,044/-. The assessee carried the matter in appeal before the First Appellate Authority and the Ld.CIT(A) for the reasons stated in his appellate order, dismissed the appeal for non-prosecution vide their order dated 30.03.2015. The assessee carried the matter in further appeal before the Tribunal and the Tribunal vide their order dated 01.04.2016 in ITA No.1334-1338/Mds/2015 set aside the appeals to the file of the Ld.CIT(A) with a direction to re-consider the issue in accordance with law.

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5. In pursuant to directions of the ITAT, the First Appellate Authority has taken up the cases for hearing. During the course of second round of proceedings, the assessee has filed a petition for admission of additional ground before the Ld.CIT(A) in light of certain judicial precedents and challenged the validity of assessment order passed by the AO u/s.143(3) r.w.s.153C of the Act, and consequent additions made thereon in absence of incriminating material found as a result of search. The Ld.CIT(A) after considering relevant submissions of the assessee and also by following the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. v. CIT reported in [1998] 229 ITR 383 (SC), rejected the additional ground filed by the assessee and relevant findings of the Ld.CIT(A) are as under:

6. I have considered the of the case of the appellant. It is that the appellant filed this present appeal on 06.01.2014 in Form No.35 and the appellant had, not raised these additional, grounds specifically. It is further seen that the appellant had not any of these grounds during the two rounds of appeal proceedings before the First Appellate Authority while seeking frequent adjournments. After a lapse of nearly seven years, the appellant has raised these issues. The appellant has not offered any explanation as to why it was not raised/advanced earlier during the pendency of appeal proceedings.

7. The appellant had filed his return of income u/s.139 on 01.01.2003 admitting income of Rs.2,12,427/-. Pursuant to the notice u/s 153C, the appellant filed his return on 26,05.2009, admitting income of Rs.2,12,427/-, The assessment u/s 143(3) r.w.s.153C was completed on 30.11.2010, determining the income at Rs.8,38,150/- wherein the AO had added Rs.6 lakhs of unexplained cash credit and Rs.13,727/- towards undisclosed investment in shares. It is vital to note that the appellant had agreed to the addition of Rs.6 lakhs and the undisclosed investment in shares was. on the basis of loose sheet in Annexure.6/CM/Books/Seized dt 11.07.2008, The appellant had participated in the assessment proceedings and furnished details and in the assessment order passed u/s 143(3) r.w.s.263 of the Act which is pending for adjudication in the present appeal proceedings, the AO has added interest income from SB Account of Rs.10,367/-; interest on daughter's deposit of Rs.39,826/- and shortfall in dividend income offered of Rs.2,044/- to the total income of Rs.8,38,150/- determined in the assessment order u/s.143(3) r.w.s.153C dated 30.11.2010.

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8. Section 4 of the Act creates the Charge for the levy of Income-tax as per the rates in force on the total income of a particular previous year and that the tax shall be deducted at source or paid in advance as per the provisions of the Act. The Act has laid down a scheduler system of taxation such as Income from Salary, Income from Profits of Business or Profession etc; and has laid down the law for computing income subject to the fulfillment of conditions stipulated therein. The appellant is required to comply with the provisions of law inasmuch as the statute has fastened certain responsibilities on the tax payer such as maintenance of accounts as stipulated, obligation to get the accounts audited, duty to file returns of income within the due date [including belated and revised returns], need to pay advance tax and claiming credit for TDS/TCS in the manner provided in the Act. The Act at the same time has provided for penal and other consequences in case of failure to comply with the relevant provisions. Thus the Act enjoins upon a taxpayer the sacrosanct duty to file his return disclosing his total income as per the provisions of law and complying with them. In fact, the taxpayer is required to make verification while filing return of income.

9. In the case of the appellant, he had filed the return 17.08.2010 in response to the notice issued u/s.153C after carrying out necessary verification. The appellant, now seeks additional benefits that include income offered by him represented by unexplained opening balance in the assessment proceedings u/s.143(3) r.w.s.153C for which the assessment was completed on 30.11.2010.

10. In the case of National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383 (SC), the Hon'ble Apex Court while considering the powers of the Appellate Commissioner as well as the Tribunal to permit additional grounds observed as under:

"In the case of Jute Corporation of India Ltd. v. CIT [1991] 187 ITR 688, this court, while dealing with the powers of the Appellate Assistant Commissioner, observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of the assessment passed by the Income-tax Officer. This court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and the same could not have been raised earlier for goods reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also."

11. At the same, it has also been accepted and held that the appellate authorities have the discretion as to whether or not to entertain such additional claims. Existence of jurisdiction has been approved by the Hon'ble Courts and so is the exercise of jurisdiction, for exercise of jurisdiction is

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different from the existence of jurisdiction. The appellate authority has to come to a conclusion that the claim is a bona fide and that he same could not have been raised earlier for good reasons.

12. As to the admissibility of the additional ground, it has to be seen whether the appellant has satisfied the twin tests, as laid down by the Hon'ble Supreme Court-whether the ground raised was bona fide, and whether the same could not have been raised earlier for good reasons; and each case has to be considered on its own facts. The facts of the case of the appellant are unique inasmuch as the appellant offered the opening balance during the assessment proceedings u/s 153C.

13. At this stage, it is apposite to refer to the decision of the Hon'ble Supreme Court in the case of Sun Engineering Works Private Ltd. (1992) 198 ITR 297(SC) wherein it has been held that section 147 of the Act is meant for the benefits of the Revenue and not for the assessee; and that the assessee cannot be permitted to convert the reassessment proceedings into an appeal or revision in disguise and seek relief in respect of items earlier rejected or claimed; relief in respect of items not claimed in the original assessment proceedings. Similarly, the provisions of Section 153A or 153C of the Act are directed to assess or reassess the income for six assessment years on search proceedings and hence the assessment proceedings under that section are for the benefit of revenue Taking into account the entire factual matrix of the case, and after considering that the twin tests laid down by the Hon'ble Supreme Court are not satisfied, I am of the view that the appellant has not offered any credible explanation that its omission to raise the additional grounds earlier was not willful or unreasonable. Therefore, I do not find any valid or appropriate reason to admit these additional grounds of appeal. Accordingly, the additional grounds of appeal relating to seeking additional benefits/ reliefs are untenable and therefore are not admitted.

6. The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in not admitting the additional grounds filed by the assessee challenging validity of assessment order passed by the AO u/s.143(3) r.w.s.153C of the Act, in pursuant to search action conducted u/s.132 of the Act, without appreciating the fact that the legal ground taken by the assessee challenging validity of assessment proceedings, is purely a legal ground which can be taken any time of the proceedings, including proceedings before the First Appellate Authority. In this regard, the Ld.Counsel for the assessee has relied upon the decision of ITAT, Chennai, in the case of S.A. Bhimaraja in ITA No.3414/Chny/2016 order dated 23.07.2021.

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7. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that there is no merit in additional grounds taken by the assessee before First Appellate Authority challenging validity of assessment order passed by the AO u/s.143(3) r.w.s.153C of the Act, because, if at all the assessee wants to challenge jurisdiction of the AO, the assessee ought to have taken this legal ground when the AO has completed the assessment in pursuant to search action conducted u/s.132A of the Act, and consequent assessment order passed by the AO u/s.153A & 153C of the Act. Since, the proceedings pending before the First Appellate Authority, is in pursuant to assessment order passed by the AO u/s.143(3) r.w.s.263 of the Act, the assessee can at best only challenge the issue questioned by the PCIT in 263 proceedings and consequent additions made by the AO in the assessment proceedings. However, the assessee cannot question the legality of assessment order in this proceedings. Therefore, the Ld.CIT(A) has rightly rejected the additional grounds taken by the assessee and their orders should be upheld.

8. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The assessee has filed additional grounds before the First Appellate Authority, when the Ld.CIT(A) has taken up the proceedings in pursuant to directions of the ITAT. The assessee has challenged legality of assessment order passed by the AO and consequent additions made thereon in absence of incriminating material found as a result of search. Although, the legal ground taken by

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the assessee challenging validity of assessment proceedings is supported by plethora of judicial precedents, but, the question needs to be answered is, whether the assessee can take said legal ground in the proceedings pending before the First Appellate Authority in pursuant to assessment proceedings completed by the AO u/s.143(3) r.w.s.263 of the Act, or not. It is an admitted fact that the assessee does not challenge assessment order passed by the AO u/s.143(3) r.w.s.153C of the Act, in pursuant to search action conducted u/s.132 of the Act, and additions made by the AO thereon. In fact, the assessee has accepted assessment order passed by the AO and has not preferred any appeal before the First Appellate Authority. Therefore, in our considered view, the assessment proceedings in pursuant to search action u/s.132 of the Act, become final and reached finality. Further, the case has been subjected to 263 proceedings by the PCIT. The PCIT has taken up 263 proceedings on certain issues and set aside the assessment order passed by the AO u/s.143(3) r.w.s.153C of the Act, for the AYs 2003-04 to 2007-08 with a direction to AO to re-do the assessment on the issue questioned in the 263 proceedings. We do not know, whether the assessee has challenged 263 order passed by the PCIT or not. The AO has passed consequential assessment order u/s.143(3) r.w.s.263 of the Act, for all assessment years and has made additions to the issues questioned by the PCIT in 263 proceedings. The assessee has challenged the order passed by the AO u/s.143(3) r.w.s.263 of the Act, before the First Appellate Authority and challenged various additions made

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by the AO and not challenged legality of assessment order passed by the AO. The Ld.CIT(A) dismissed the appeal filed by the assessee ex-parte for non-appearance. The assessee carried the matter in further appeal before the ITAT and the Tribunal vide order dated 01.04.2016 in ITA Nos.1334 to 1338/Mds/2015, set aside the appeals to the file of the Ld.CIT(A) with a direction to re-consider the issues. At this stage, in the second round of litigation, the assessee has filed petition for admission of additional grounds by taking a legal ground challenging validity of additions made by the AO in the assessment framed u/s.143(3) r.w.s.153C of the Act, on the ground that additions made by the AO does not have any reference to incriminating material found as a result of search. We are not going into the aspects whether additions made by the AO are supported by any incriminating material found as a result of search, or not, but we are only on the question whether the assessee can take a legal issue in this round of proceedings or not. In our considered view, the assessee cannot take this legal issue challenging validity of assessment proceedings and consequent additions made by the AO in absence of incriminating material found as a result of search, because, the present proceedings pertains to assessment order passed in pursuant to directions of the PCIT u/s.263 of the Act. Since, pending proceedings before the Ld.CIT(A) is with reference to additions made in pursuant to directions of the PCIT, in our considered view, the assessee can only challenge additions made by the AO in pursuant to directions of the PCIT in 263 proceedings on merits, but the assessee

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cannot question the legality or otherwise of assessment order passed by the AO u/s.143(3) r.w.s.153C of the Act, in pursuant to search action u/s.132 of the Act. In our considered view, two proceedings are independent and different. The first proceedings of assessment order passed by the AO in pursuant to search action is altogether a different proceedings which has reached finality when the assessee does not challenge assessment order passed by the AO before the First Appellate Authority. The present proceedings pending before the First Appellate Authority, is in pursuant to directions of the PCIT u/s.263 of the Act, and is altogether a different proceedings and in this proceedings, the assessee cannot question the legality of assessment order passed in pursuant to search action u/s132 of the Act. Therefore, we are of the considered view that the Ld.CIT(A) has rightly rejected additional grounds filed by the assessee challenging validity of assessment proceedings and consequent addition made thereon. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss the appeals filed by the assessee for the AYs 2003-04 to 2007-08.

9. In the result, the appeals filed by the assessee are dismissed.

Order pronounced on the 28th day of September, 2022, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

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चेन्नई/Chennai,
दिनांक/Dated: 28th September, 2022.
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF